

**APPLICANTS:**  
**Jack & Jean Wilson**

**REQUEST:** A variance pursuant to  
Section 267-36B, Table IV, to subdivide without  
the required 100 foot minimum lot width in the  
R1 District

**HEARING DATE:** October 27, 2004

**BEFORE THE**  
**ZONING HEARING EXAMINER**  
**FOR HARFORD COUNTY**  
**BOARD OF APPEALS**  
**Case No. 5446**

### **ZONING HEARING EXAMINER'S DECISION**

**APPLICANTS:** Jack & Jean Wilson

**LOCATION:** 1505 Philadelphia Road, Joppa  
Tax Map: 65 / Grid: 1D / Parcel: 530  
First Election District

**ZONING:** R1/ Urban Residential District

**REQUEST:** A variance pursuant to Section 267-36 B, Table IV, of the Harford County  
Code, to subdivide with less than the required 100 foot minimum lot width  
in an R1 District.

#### **TESTIMONY AND EVIDENCE OF RECORD:**

Jack Wilson, Co-Applicant, described the subject property as being located at 1505 Philadelphia Road, Joppa, Maryland, and consisting of 1.88 acres. The subject property is improved by a single-family home with a two-car garage. The property is also improved by outdoor storage sheds, an above-ground swimming pool, and is extensively landscaped. The Applicants have lived on the subject property for approximately 18 years. They described the property as being exceedingly narrow and long, having dimensions of 100 feet by 800 feet. The Applicant suggested that the property is unusually shaped, even for the neighborhood in which it is located, which has a number of non-uniform sized parcels.

If the variance were allowed, the Applicants would have the ability to construct a larger house on the second, newly created lot, if desired, and perhaps move into that home in the future.

If the variance were granted the new lot would have frontage along Philadelphia Road for 25 feet, with the remaining frontage being approximately 76 feet. The property is served by County water and sewer.

## Case No. 5446 – Jack & Jean Wilson

Mr. Wilson described most of the other lots in the area as having greater road frontage than his lot, with the majority having road frontages of 150 to 200 feet. Furthermore, the other lots are smaller in acreage than his lot. Most of the other lots are about 200 feet deep and somewhat wider than the subject property. The Applicants believe that the proposed variance, if granted, would have no adverse impact upon the neighborhood.

Next for the Department of Planning and Zoning testified Anthony McClune. Mr. McClune indicated, on behalf of the Department, that the property is very unique. It is very long and very narrow. In support of his opinion Mr. McClune relied upon Attachment 7 of the Staff Report, which shows the configuration of the various lots in the area.

The subject property, according to Mr. McClune, contains sufficient acreage and length to meet all setbacks for subdivision into two lots, including minimum lot size, except it does not have sufficient frontage. The newly created lot is proposed to be accessed by a panhandle, and would comply with the Harford County Zoning requirement of having 25 feet in frontage. The problem faced by the Applicants is that the remaining lot, that is, the lot which would be created around the existing home, would have 76 feet of road frontage – 24 feet less than the required 100 foot lot width. Mr. McClune emphasized, however, that both lots must be a minimum of 20,000 square feet.

Mr. McClune expressed concerns about the driveways to the two parcels if approval is granted. Recommended conditions are that the two lots share a common driveway and that a common driveway agreement govern the use of that driveway.

The Applicants expressed their willingness to abide by such conditions, if approval is granted.

Next in opposition testified Ms. Rosella Wimmer, 1509 Philadelphia Road, Joppa, Maryland. Ms. Wimmer stated that the back of her property adjoins the back of the Applicants' property. She was concerned that any home constructed on the new lot, which would be to the rear of the Applicants' property, would be too close to Ms. Wimmer's parcel. Mr. McClune informed Ms. Wimmer that the required side yard setback in the R1 District is 15 feet. Ms. Wimmer stated that would, perhaps, be too close to her property.

William Forester, 1507 Philadelphia Road, Joppa, then testified. Mr. Forester, whose property immediately adjoins the subject property, expressed concerns about the trees which now exist along his common property line with the Applicants. The trees, which are located on the subject property, have limbs which extend over the property line and over Mr. Forester's property. Mr. Forester objects to the Applicants' failure to maintain the trees and limbs which extend over his property and requested that the trees be trimmed.

No other testimony was offered or evidence submitted in opposition to the request.

Case No. 5446 – Jack & Jean Wilson

**APPLICABLE LAW:**

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

*“Variances.*

- A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:*
  - (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.*
  - (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*
- B. In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*
- C. If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

**FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

This variance request, which would allow the subdivision of the Applicants’ 1.88 acre parcel into two building lots, can be allowed only if it is found that the Applicants would suffer practical difficulty or unreasonable hardship as a result of some unique feature of the property. The Applicants suggest that the practical difficulty they suffer is their inability to subdivide their parcel into two lots. Absent such an unusually narrow frontage, two lots would be allowed.

## Case No. 5446 – Jack & Jean Wilson

The evidence is uncontradicted that the subject property is unique. The Applicants and Mr. McClune of the Department of Planning and Zoning testified that the lot is unusually narrow along Philadelphia Road, and unusually deep. A review of the Tax Map, Attachment 7 to the Staff Report, graphically shows that the Applicants' lot is different from others in that it is narrower than most and longer than most. If it were not for the narrow width of the property, the Applicants would easily be able to subdivide into two, if not more, lots.<sup>1</sup> Because they cannot, they suffer a practical difficulty.

Mr. McClune suggested that the two resulting lots be required to utilize a common drive. It is found that such a suggestion is reasonable, and that the most clearly visible impact of such a variance, which would be the construction of two driveways, would be eliminated by two lots utilizing one common drive. Accordingly, the requested variance will not adversely impact any adjoining property or neighbor.

While two of the neighbors expressed concern about overhanging limbs and the location of the potential dwelling in relationship to an existing lot, it is found that neither one of those concerns are reason to deny the granting of this variance. Neither the tree limbs complained of nor the possible, permissible, location of the dwelling on the new lot would be in violation of any applicable Zoning regulations, nor do these observations or concerns rise to the level of objective adverse impact.

### **CONCLUSION:**

For the above reasons, it is recommended that the requested variance be granted, subject to the following conditions:

1. The Applicants shall submit a preliminary plan for review and approval by the Department of Planning and Zoning.
2. The Applicants shall submit a final plan to the Department of Planning and Zoning for review and approval.
3. The Applicants shall obtain all necessary permits and inspections for the construction of the new dwelling.

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<sup>1</sup> Allowable lot size in the R1 District, with water and sewer, is 20,000 square feet. With sufficient road frontage, the Applicant would be able to subdivide their property into, perhaps, three lots. They seek, however, permission for two only.

Case No. 5446 – Jack & Jean Wilson

4. The two lots to be created from the subject property shall be required to share a common driveway which shall be subject to a common drive agreement to be reviewed and approved by the Department of Planning and Zoning.
5. That no further subdivision of the subject property shall be allowed.

Date: December 3, 2004

ROBERT F. KAHOE, JR.  
Zoning Hearing Examiner